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Episcopal Church Goes To Court in Virginia to Retain Parishes' Property Complaint Asks For Compliance with Canons, Accounting Of Property

By Mary Frances Schjonberg

[ENS] The Episcopal Church has joined the Diocese of Virginia (<http://www.thediocese.net>) in its legal dispute over possession of the property of 11 congregations in which the majority of the members and clergy voted in 2006 and early 2007 to leave the denomination and affiliate with African Anglican bishops.

Lawyers filed a 20-page complaint in the County of Fairfax, Virginia, courts on February 9. The complaint lists the Episcopal Church as the plaintiff and names as defendants the former clergy and vestry members of 11 parishes and missions, as well as trustees who technically hold title to the real property of some of the parishes.

The complaint names the parishes as defendants "because their real and personal property and affairs are currently under the de facto control of individuals who claim the right to sever the link between the parties and the Diocese and the Episcopal Church, to divert the parishes' real and personal property for their own use in affiliation with another denomination outside the United States, and to exclude the parishes' faithful Episcopalian members for use and control of that property."

The clergy and vestry, or vestry committee members in the case of the two missions, are named because they "have left the Episcopal Church, yet continue to exercise control over the real and personal property" of the congregation.

Virginia Bishop Peter Lee inhibited (http://www.episcopalchurch.org/3577_81537_ENG_HTM.htm) 21 diocesan clergy in mid-January and rescinded the licenses of six others, saying that he was acting on a determination by the diocesan Standing Committee that the clergy "have openly renounced the doctrine, discipline or worship of the Episcopal Church and, therefore, have abandoned the communion of the Episcopal Church" because of the votes.

The filing comes in support of actions already taken by the diocese.

The parishes and missions (of the 195 in the diocese) are: Church of the Apostles, Fairfax; Church of the Epiphany, Herndon; Church of Our Saviour, Oatlands; Church of the Redeemer, Chantilly; Church of the Word, Gainesville; Potomac Falls Church, Sterling; St. Margaret's, Woodbridge; St. Paul's, Haymarket; St. Stephen's, Heathsville; The Falls Church, Falls Church; and Truro Church, Fairfax. Church of the Word and Potomac Falls Church are missions of the diocese; the other nine are parishes.

The majority of the laity and clergy of those congregations voted to sever ties with the Episcopal Church and affiliate with the Anglican Church of Nigeria by way of the Anglican District of Virginia, part of the Convocation of Anglicans in North America (CANA) (<http://www.canaconvocation.org/>). The members amount to about 8,000 of the diocese's roughly 90,000 Episcopalians.

The Episcopal Church includes some 7,200 congregations in its 100 domestic dioceses, and about 150 in its 10 overseas dioceses and one convocation.

The complaint contends that neither the canons of the Episcopal Church (http://www.episcopalarchives.org/e-archives/canons/CandC_FINAL_11.29.20_06.pdf) nor those of the Diocese of Virginia (<http://www.thediocese.net/diocese/c&c/cc05.pdf>) contain any provision for "unilateral withdrawal" from the diocese or the Episcopal Church.

It cites Virginia canons that say the diocese "shall" take steps to secure the property of any parish or mission that ceases to function as an Episcopal congregation, may make any parish that ceases to function as an Episcopal parish a mission of the diocese, and assigned authority to the diocesan Executive Board for any "inactive church" (defined by not having a functioning vestry or vestry committee).

The complaint summarizes the structure and decision-making process of the Episcopal Church and its dioceses, and the responsibilities of vestry members to adhere to diocesan and Episcopal Church canons. It notes that dioceses control the formation and governance of parishes, and that only the General Convention can carve out a new diocese from an existing one or release a diocese to form or join another Province of the Anglican Communion.

The complaint also says that "there are now, and have always been, theological differences among the various independent members of the Anglican Communion."

Virginia canons, the complaint says, have held since 1793 that a parish's property is "held by and for the mission of the Church."

Likewise, the complaint notes that Episcopal Church canons govern the alienation or encumbrance of parish property without the approval of the diocesan leadership, and specify that all property must be used for the mission of the Episcopal Church.

The complaint contends that the defendants are using the real and personal property of the parishes "for their own use in association with a different church," are "continuing to divert the parishes' funds from the mission of the Episcopal Church," and have refused to comply with a January 18 resolution by the Executive Board calling for the surrender of the real and personal property to Lee.

Eight of the 11 parishes went to their local courts in December 2006 or January 2007, the complaint says, to contend that there was a division in the Episcopal Church and that they were therefore entitled to retain their property for use in another church. Potomac Falls Church, Christ the Redeemer Church and Church of the Word are believed to hold no real property and thus have not filed similar petitions, the complaint says.

"The Church has suffered and will suffer irreparable injury" as a result of those actions, the complaint alleges.

The complaint also notes that the diocese and the Episcopal Church are "working to identify faithful Episcopalian members of each parish, and in appropriate cases have recognized the faithful Episcopalians who are member of a particular parish as the continuing congregation of that parish."

Episcopalians are re-grouping in some of the affected congregations, and three-in Woodbridge, Heathsville and Falls Church-sent delegates, elected by the remaining members, to the annual Diocesan Council meeting, held January 26-27. Two members of the Herndon congregation were present as guests.

The complaint concludes by asking that the court:

- * "declare that each parish's real and personal property is held for the benefit of an Episcopal congregation or entity and must be used for the Church's ministry and mission;"

- * declare that the defendants "may not divert, alienate, or use the parishes' real and personal property except as provided by and in accordance with the Constitution and Canons of the Episcopal Church and Diocese;"

- * issue preliminary and permanent injunctions ordering the defendants to stop diverting, alienating, or using the parishes' real or personal property except as provided for in the Episcopal Church and diocesan canons, "render an accounting of all real and personal property held by each parish," and relinquish control of that property, as called for in the January 18 Executive Board resolutions.

All parties in the litigation are waiting for a panel of judges to decide on their request to consolidate all the pending cases concerning the property issues.

-- The Rev. Mary Frances Schjonberg is national correspondent for the Episcopal News Service.